

## EXHIBIT 1

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

|                         |   |                      |
|-------------------------|---|----------------------|
| SECURITIES AND EXCHANGE | . |                      |
| COMMISSION,             | . |                      |
|                         | . |                      |
| Plaintiff,              | . | Case No. 15-cv-06076 |
|                         | . |                      |
| vs.                     | . | Newark, New Jersey   |
|                         | . | June 5, 2019         |
| DUBOVOY et al.,         | . |                      |
|                         | . |                      |
| Defendants.             | . |                      |

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE MICHAEL A. HAMMER  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

|                   |                                       |
|-------------------|---------------------------------------|
| For the Plaintiff | JOHN V. DONNELLY, III, ESQ.           |
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|                   | Commission                            |

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|    |                         |                       |
|----|-------------------------|-----------------------|
| 1  | (APPEARANCES continued) |                       |
| 2  |                         |                       |
| 3  | For the Defendant       | LEONID MOMOTOK        |
| 4  | Leonid Momotok:         | 1610 Pepperbush Court |
| 5  |                         | Suwanee, Ga 30024     |
| 6  |                         | <i>Pro Se</i>         |
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1 (Commencement of proceedings at 12:02 P.M.)

2

3 THE COURT: All right. We are on the record in  
4 Securities and Exchange Commission versus Dubovoy, Civil  
5 No. 15-6076.

6 I have counsel for the SEC here.

7 Can I ask counsel to please place their appearances  
8 on the record.

9 MR. DONNELLY: Good afternoon, Your Honor. John  
10 Donnelly from the Securities and Exchange Commission.

11 MS. BARRY: Good afternoon, Your Honor. Jennifer  
12 Barry for the SEC.

13 THE COURT: All right. Welcome.  
14 And I believe I have Mr. Momotok on the phone.  
15 Is that correct?

16 MR. MOMOTOK: Yes, Your Honor.

17 THE COURT: All right.

18 All right. So I think I will turn it over to  
19 Mr. Donnelly and Ms. Barry to update me. I know that there  
20 are certain parties who, I believe -- oh, I'm proceeding, by  
21 the way, on the record.

22 Is there any part of this that we need to seal the  
23 record for or?

24 MR. DONNELLY: I don't think so, Your Honor.

25 THE COURT: If that changes, let me know in

1 advance.

2 MR. DONNELLY: If that comes up, I think it depends  
3 on how in-depth we get on some things.

4 THE COURT: Okay.

5 MR. DONNELLY: But, in general, I think we're fine.

6 THE COURT: Okay. So why don't you folks take the  
7 lead on bringing me up to speed. I know -- the last thing I  
8 did, obviously, is I had denied without prejudice the  
9 application for alternative service. I'm not sure whether  
10 we'll be covering that. You may want to bring me up to speed  
11 with regard to some of the resolution of the other  
12 defendants. But I'll defer to you.

13 Take it away.

14 MR. DONNELLY: Thanks, Your Honor. And I'm happy  
15 to take it in whatever order it pleases the Court.

16 The way it's organized in our status update  
17 letter --

18 THE COURT: Yup.

19 MR. DONNELLY: -- is the three outstanding  
20 defendants who remain to be served.

21 THE COURT: Okay.

22 MR. DONNELLY: And those consist of the two  
23 hackers, Ieremenko and Turchynov, and Pavel Dubovoy. And to  
24 take each of those in turn.

25 As there has been --

1 THE COURT: Wait. So let me just stop you.

2 So Nelia Dubova is out in terms of the service  
3 issue.

4 MR. DONNELLY: Yes. She is no longer a service  
5 issue. She has now been served. And we filed a declaration  
6 relating to service or notice of service on May 30th. She  
7 was served pursuant to The Hague in Ukraine in the Kiev area,  
8 December 26th, 2018. We received notice of that from Ukraine  
9 May 13th, 2019. And that was -- we had --

10 THE COURT: I don't know whether that means I was  
11 right to deny your motion or you were right to make the  
12 motion, because on the one hand, it shows she was actually  
13 served, and on the other hand that puts her exactly where you  
14 said service would cover.

15 MR. DONNELLY: It -- we were right in the -- where  
16 she ended up. We had sent that for service in 2017.

17 THE COURT: Right.

18 MR. DONNELLY: So the service itself took over a  
19 year. And then the service with notification took  
20 approximately 18 months.

21 THE COURT: Okay. And then nobody thought to tell  
22 the SEC?

23 MR. DONNELLY: No. And our prior inquiries about  
24 the status of service had gone --

25 THE COURT: Unrequited.

1 MR. DONNELLY: -- unanswered. Correct.

2 THE COURT: So she was serve -- actually served  
3 when?

4 MR. DONNELLY: December 26th of --

5 THE COURT: Of what year again? I'm sorry.

6 MR. DONNELLY: 2018.

7 THE COURT: Oh, okay. So not that long ago. Okay.

8 MR. DONNELLY: No. And we've learned of it  
9 May 13th, 2019.

10 THE COURT: Okay.

11 MR. DONNELLY: Apparently, there's a court  
12 proceeding, and we've attached to the declaration.

13 THE COURT: Yup. Okay.

14 MR. DONNELLY: So she's no longer -- she was part  
15 of that motion from October 2018. She's now taken care of.

16 We will be filing for entry of a clerk's default  
17 and then subsequently moving to add her to the motion for  
18 default.

19 THE COURT: I gather she was served even under the  
20 Hague Convention in the end of December, her time to answer  
21 has expired.

22 MR. DONNELLY: Correct, Your Honor.

23 THE COURT: Okay. Okay. So where does that put  
24 us, then, vis-à-vis the remaining three?

25 MR. DONNELLY: Okay. So, again, Ieremenko is one

1 of the hackers. Turchynov is one of the hackers. And Pavel  
2 Dubovoy, the third defendant is the third Dubovoy. He is the  
3 brother of Arkadiy.

4 THE COURT: Yes.

5 MR. DONNELLY: -- and is the Dubovoy -- at SEC, the  
6 Dubovoy. And he is the uncle of Igor.

7 Let me take Ieremenko first.

8 THE COURT: Okay.

9 MR. DONNELLY: Again, one of the hackers, we filed  
10 our motion back in October 2018. Subsequent to the filing of  
11 that motion, the SEC commenced another case against  
12 Ieremenko, SEC v. Ieremenko, which was filed January 2019.  
13 There is a parallel criminal case, U.S. v. Radchenko, which  
14 is also in this court, also filed at the same time.

15 THE COURT: Right. And that was also assigned to  
16 Judge Arleo?

17 MR. DONNELLY: Correct.

18 THE COURT: Yeah.

19 MR. DONNELLY: Those are assigned to Judge Arleo  
20 and Magistrate Judge Wettre.

21 THE COURT: Right.

22 MR. DONNELLY: So, apparently, after this hack was  
23 shut down and we filed our case.

24 THE COURT: That's an EDGAR hack?

25 MR. DONNELLY: Yes.



1 THE COURT: Right.

2 MR. DONNELLY: The 2000- -- so apparently what  
3 Mr. Ieremenko did in conjunction with Mr. Radchenko, was turn  
4 the hacking skills and the same type of scheme at issue here,  
5 stealing of material nonpublic information, providing that to  
6 traders to trade on before it's disseminated to the market,  
7 and then they focused their specific talents, not just on the  
8 U.S. markets and disabling U.S. markets and undermining  
9 credibility in our markets, but attacking our governmental  
10 institutions, specifically the SEC and EDGAR, which is the  
11 system that we use for filing -- we have public company  
12 documents, the 10-Ks, the 8-Ks --

13 THE COURT: Right.

14 MR. DONNELLY: -- and other publicly available  
15 information.

16 THE COURT: Right. And that's the one where you  
17 had new information that puts Ieremenko in Kiev.

18 MR. DONNELLY: There was additional information  
19 that we were not able to use in the October filing --

20 THE COURT: Right.

21 MR. DONNELLY: -- that was used in the subsequent  
22 filing before Magistrate Judge Wettre, which was ultimately  
23 granted for service by publication in that case.

24 THE COURT: Right.

25 MR. DONNELLY: Which order came out subsequent to

1 Your Honor's April order.

2 THE COURT: Right.

3 MR. DONNELLY: So that wasn't available to either  
4 the Court or to us when that happened.

5 THE COURT: Right.

6 MR. DONNELLY: But I think there are a few  
7 important things that come out of that, Your Honor. And one  
8 of the things, obviously, there was no opposition for us to  
9 respond to as these defendants were not here.

10 THE COURT: Right.

11 MR. DONNELLY: And we hadn't had the chance to  
12 speak to some of the questions that Your Honor quite  
13 legitimately would have before granting a motion for  
14 alternative service.

15 And one of the things I'd like to address is  
16 Ieremenko's knowledge of our underlying case.

17 THE COURT: Okay.

18 MR. DONNELLY: Which --

19 THE COURT: I know you had addressed -- I think I  
20 had expressed at least a little skepticism over, but go  
21 ahead.

22 MR. DONNELLY: And I appreciate that.

23 And here's why I think under the standard  
24 applicable to a motion for alternative service, which is  
25 reasonably calculated to provide notice and discretion of the

1 Court, as opposed to, say, for motion for summary judgment  
2 where a higher standard of evidentiary rules would apply.

3 THE COURT: Right.

4 MR. DONNELLY: I don't think that level applies  
5 here. I think it's just what's reasonable under the  
6 circumstances with the information that we have available  
7 knowing that while these defendants are reaching into the  
8 country to undermine the integrity of our markets and to now  
9 attack the institutions --

10 THE COURT: Right.

11 MR. DONNELLY: -- they're also trying to hide  
12 behind an iron curtain and avoid service and accountability.  
13 And they shouldn't be allowed to do that.

14 I think the first reason why we can safely conclude  
15 that Ieremenko and Turchynov know about our case is this was  
16 such a lucrative fraud, such a lucrative --

17 THE COURT: You're talking about the alleged fraud  
18 here, not in the EDGAR --

19 MR. DONNELLY: Yes.

20 THE COURT: Okay.

21 MR. DONNELLY: I'll come to the subsequent case --

22 THE COURT: Okay.

23 MR. DONNELLY: -- shortly.

24 But the alleged fraud here.

25 If we go back to when we brought this case in

1 August 2015, the scheme was going at least to May 2015, and  
2 we saw the trading, and that's been included, and that's part  
3 of the public record in this case.

4 They made hundreds of millions of dollars across  
5 all of these traders, and it's wide-ranging and far-flung.

6 THE COURT: Right.

7 MR. DONNELLY: We bring our case. Seven to nine  
8 individuals are arrested in the United States in connection  
9 with the case. Millions of dollars, approximately \$80  
10 million of assets for frozen worldwide against the  
11 30-some-odd defendants that we've name.

12 THE COURT: Right.

13 MR. DONNELLY: And then within 60 days of bringing  
14 the case, Jaspen Capital Partners, who is large  
15 hedge-fund-type entity, in Kiev, the home base of where  
16 Turchynov and Ieremenko are operating out of, settles with us  
17 and pays \$30 million.

18 So the fact that the coconspirators have been  
19 caught up, massive amounts of money were frozen. People were  
20 arrested. They were sued both by the SEC and criminally,  
21 Ieremenko and Turchynov and Pavel were all named criminally  
22 in parallel cases here in New Jersey, is the first indication  
23 that the two guys at the center of that scheme are going to  
24 be aware that these cases have been brought.

25 THE COURT: Let me ask you a quick question.

1           What's the time frame of the alleged EDGAR hack  
2 compared to -- so we know that the time frame alleged in this  
3 case ends in or around May of 2015.

4           Right?

5           MR. DONNELLY: Right.

6           THE COURT: What's the time frame of the alleged  
7 EDGAR hack? I'm guessing it postdates this case.

8           MR. DONNELLY: It does.

9           THE COURT: Right.

10          MR. DONNELLY: It's subsequent. And Mr. Ieremenko  
11 has what I think the British describe as a little bit of  
12 cheek, maybe moxie or some other word for it here in the  
13 United States.

14          But I think cheekiness addresses it well in that  
15 his email address is Alex Boesky -- or one of his email  
16 addresses --

17          THE COURT: Boesky?

18          MR. DONNELLY: Exactly.

19          THE COURT: To the uninitiated, Boesky is a  
20 reference to a famous or infamous 1980s Wall Street trader.

21          MR. DONNELLY: Who was famous for insider  
22 trading -- yes. Exactly.

23          THE COURT: On who, at least allegedly, the  
24 character Gordon Gekko, Wall Street, was at least very  
25 loosely based, as I understand it, who had that sort of line,

1 "Greed is good."

2 MR. DONNELLY: Well, that's not exactly what --

3 THE COURT: Boesky said.

4 MR. DONNELLY: That is a fair summary and  
5 approximation. So that's -- that's from my time.

6 THE COURT: Den of Thieves was the book that I read  
7 that made me know that I absolutely wanted to be an assistant  
8 U.S. attorney. So I'm familiar with that stuff.

9 MR. DONNELLY: And that was his email. But that's  
10 an email address that he's used --

11 THE COURT: Right.

12 MR. DONNELLY: -- an alias that he has used on the  
13 Internet and things of that nature.

14 So then we bring our case. We seize all -- seize  
15 all this money. And, as I suggest, if you're at the  
16 epicenter of the fraud and you're collecting payments from  
17 all of these people that you're providing this information to  
18 and all of these people have just had a lot of money frozen,  
19 you're either not going to have coconspirators anymore  
20 because they're all dropping out and not sending you checks  
21 because their money got frozen, or they're emailing you and  
22 calling you or the middleman who's operating between you,  
23 saying, "What's going on? I've just been sued for the SEC  
24 and had millions of dollars frozen."

25 And, again, one of the main defendants who paid the

1 most money of any defendant in this case so far is in Kiev.

2 So I think he knows about it.

3 And then what he does is, okay, you want to shut  
4 down that fraud, you want to shut down that scheme, I'm going  
5 to turn my hacking abilities to you, where there's another  
6 repository of material, nonpublic information.

7 THE COURT: Right.

8 MR. DONNELLY: How do you like that --

9 THE COURT: As opposed to unpublished press  
10 releases that they were allegedly using in this case.

11 MR. DONNELLY: Correct. And so now they're going  
12 after EDGAR, and they're getting information from filings  
13 that still are disclosed earnings and disclosing, you know,  
14 outlook information. So it's information that you can trade  
15 on successfully and gives you an advantage over other market  
16 participants.

17 But, now, as part of that cheek, there's a little  
18 bit of, you know, poking at the bear, saying I can not only  
19 do this to newswire services, I can do this to the federal  
20 government.

21 THE COURT: Right.

22 MR. DONNELLY: I can do this to the Securities and  
23 Exchange Commission, who sued me. I'm going to get back at  
24 them.

25 And they did that for some period of time, as set

1 | forth there. And Radchenko was part of it. They profited on  
2 | that.

3 |           So that's what results in the second case.

4 |           But I do believe that for purposes of a motion for  
5 | alternative service, that is an additional data point that  
6 | can give the Court comfort: This guy knows about the SEC  
7 | case. This -- and obviously when we filed, it was published  
8 | all over the world, at least on those first few days. It was  
9 | a new claim. Russia, it's on our website. Wall Street  
10 | Journal. Washington Post. It was everywhere. It was a big  
11 | case. It's one of the biggest -- actually at the time, it is  
12 | the biggest hacking and trading fraud in the United States  
13 | and, likely, the world.

14 |           So that's another data point that he knows.

15 |           And --

16 |           THE COURT: I think -- two more data points that I  
17 | need for your renewed motion.

18 |           One is -- because I think your initial application  
19 | didn't address this. I have to be confident that there's no  
20 | international agreement that prohibits. Right? That's the  
21 | one.

22 |           The second is to the extent you're still going to  
23 | seek to use the emails, I need at least to know that those  
24 | are viable emails.

25 |           One of the -- right? We dropped a footnote in the



1 old decision that distinguished -- sorry.

2 MR. DONNELLY: I'm familiar with it, Your Honor,  
3 the prior decision.

4 THE COURT: Slepencov and Zakharchenko.

5 MR. DONNELLY: Zakharchenko, certainly.

6 THE COURT: I need -- at least need to know --  
7 look, you're not going to be able to prove -- I doubt you're  
8 going to be able to prove that they're actively using the  
9 email. But I don't know that the -- the application doesn't  
10 need to go that far, because it doesn't need to say -- the  
11 standard isn't, you know, beyond all reasonable doubt that  
12 they're going to get notice. It's, you know -- it's what's  
13 reasonable.

14 I at least need to know, to the extent you're going  
15 to rely on the emails, that those are still active email  
16 accounts.

17 MR. DONNELLY: And, Your Honor, I could speak to  
18 that, because we took Your Honor's instruction from that  
19 opinion --

20 THE COURT: Yeah.

21 MR. DONNELLY: -- and earlier this month before  
22 appearing here, I sent emails to the Gmail accounts that I  
23 had --

24 THE COURT: Right.

25 MR. DONNELLY: -- to every email account I have. I

1 can't get into some of them. This is where it might end --  
2 but I think I can do this without going off the record. All  
3 of the Gmail accounts went through --

4 THE COURT: Okay.

5 MR. DONNELLY: -- and did not get bounced back.

6 THE COURT: And nothing was returned as  
7 undeliverable.

8 MR. DONNELLY: Right. Nobody responded to me.

9 There were two other accounts that were not Gmail  
10 that did get bounced back as undeliverable.

11 But we have at least one Gmail account for Pavel;  
12 one Gmail account for Turchynov; and at least one for  
13 Ieremenko. I believe we have more than one.

14 THE COURT: Okay.

15 MR. DONNELLY: And I sent -- when I sent that  
16 email, I sent them a copy of the summons, a copy of the  
17 amended complaint in both English and Ukrainian.

18 Now, perhaps unsurprisingly, no one responded. But  
19 they did go through and did not get bounced back.

20 THE COURT: Okay.

21 MR. DONNELLY: So that -- that is data point that I  
22 believe we can check that box now.

23 THE COURT: Okay. I'm sorry. Go ahead.

24 MR. DONNELLY: Then I was going to say the third  
25 piece -- and this is something that I think, as events have

1 developed in 2018 and 2019, perhaps will give the Court more  
2 comfort with respect to that article that appeared in The  
3 Verge that we had attached to our motion at Exhibit 1.

4 THE COURT: Right.

5 MR. DONNELLY: And I understand the Court's  
6 concern, because, you know, it's the Internet. People can  
7 publish anything that they want on the Internet. And The  
8 Verge, while appears to be an online publication, certainly  
9 does not have a history in the United States like the Wall  
10 Street Journal or the Washington Post that provides a little  
11 more comfort if an article appears --

12 THE COURT: Right. This is the interview with  
13 Dubovoy?

14 MR. DONNELLY: So it's an article about the hacking  
15 in general.

16 THE COURT: Right.

17 MR. DONNELLY: Including an interview with Dubovoy.  
18 And here's why I think with the standard applicable  
19 here, that is another data point that can provide comfort of  
20 knowledge for all of these defendants.

21 There's indicia of credibility on the face of the  
22 article itself. So it's not anonymous. There's a name  
23 attached to it. There's a website attached where he's  
24 public, that has published other articles, and it's gotten  
25 picked up by other things.

1           It's a 10-page article that -- at least 10 pages --  
2 that is well-researched, that there's information in there  
3 relating to filings in our case, relating to filings in the  
4 criminal case, relating either from -- I'm not sure if it was  
5 from transcripts or from personal observation of the criminal  
6 trial -- or maybe from filings in that case that accurately  
7 described the events.

8           And here's another piece with respect to  
9 Ieremenko -- and I'll come back to Pavel in a minute, as well  
10 as Turchynov, but with respect to Ieremenko, at the end of  
11 that article -- and this is August 2018 --

12           THE COURT: Right.

13           MR. DONNELLY: -- so several months before the SEC  
14 files this case in January against Ieremenko and the  
15 Radchenko -- it talks about Ieremenko and Radchenko teaming  
16 up to hack EDGAR and to engage in the scheme to trade on  
17 EDGAR and that. That wasn't public at that time. So, to me,  
18 is another indicia that the article overall can be seen as  
19 credible, even if we can't verify necessarily every single --  
20 every single point.

21           THE COURT: Right.

22           MR. DONNELLY: And then with respect to Pavel, the  
23 author does purport to talk to Pavel about the case. Pavel,  
24 as one might expect, if the article is accurate, denies  
25 involvement in the case. I am not concerned by the denial,

1 | because that denial's been undermined by the testimony of his  
2 | brother Arkadiy and his nephew Igor at the criminal trial  
3 | against Mr. Korchevsky that happened in the Eastern District  
4 | of New York in front of Judge Dearie, that's in the  
5 | transcript where they talk about Pavel's involvement in the  
6 | scheme and his central position in bringing this about and  
7 | bringing the opportunity to Arkadiy.

8 |           THE COURT: There's also more fundamentally, you  
9 | know, if the author were going to make up an article, they  
10 | probably would have made up a more -- far more salacious one  
11 | than just denials.

12 |           MR. DONNELLY: Right. Absolutely.

13 |           And it's not something -- it's not a straight  
14 | comment on the -- on the Internet saying, hey, Ieremenko's in  
15 | Kiev, if you're looking for him, SEC.

16 |           It's a full-blown reasoned article going through  
17 | the steps. I don't know the official in Ukraine that they  
18 | cite, but I did do some Google research, and that person  
19 | appears to have that position.

20 |           And it all -- it's consistent with what we know.

21 |           THE COURT: Right.

22 |           MR. DONNELLY: So there is obviously some things in  
23 | there that we don't know -- don't know for sure -- often talk  
24 | to Pavel. But it's all consistent in the things that we can  
25 | verify from pleadings in this case; from testimony at the

1 criminal trial is consistent; and then the Radchenko piece  
2 with Ieremenko hacking EDGAR that -- that wasn't out there.

3 THE COURT: Right.

4 MR. CRITCHLEY: -- in August 2018.

5 THE COURT: So when can I expect your renewed  
6 motion?

7 MR. DONNELLY: Whenever Your Honor -- a couple of  
8 weeks?

9 THE COURT: Fine. Do you want to say by June 21?

10 MR. DONNELLY: Perfect.

11 THE COURT: I don't -- I am not trying to put you  
12 in a position where you have to go back and spend  
13 all-nighters getting this stuff together.

14 MR. DONNELLY: I appreciate that.

15 THE COURT: So you tell me.

16 MR. DONNELLY: I appreciate that.

17 I think we can -- we can make that pitch and --

18 THE COURT: Do you want me to give you to  
19 July 12th? And if you file it before then -- you can file it  
20 tomorrow, for all I care.

21 MR. DONNELLY: I don't think I'd be able to file  
22 tomorrow.

23 THE COURT: But if you want until -- this is the  
24 outermost deadline, not -- you know, you can certainly file  
25 before then.

1 MR. DONNELLY: Okay.

2 THE COURT: All right.

3 MR. DONNELLY: Thank you, Your Honor.

4 THE COURT: Great. All right. Look forward to it.

5 All right.

6 MR. DONNELLY: And then -- so our second category  
7 of defendants are the defendants who were charged  
8 criminally --

9 THE COURT: Right.

10 MR. DONNELLY: -- and their related entities, and  
11 there's nine of them. Five of them have been signed up with  
12 offers of settlement.

13 We have four others; one of whom is Mr. Momotok,  
14 who's on phone. And Mr. Momotok and I talked on Monday. We  
15 had a positive conversation. I would let him, you know,  
16 speak for himself. But my understanding of our conversation  
17 was that he wanted to take a little more time to review it,  
18 because English is not his first language.

19 THE COURT: Right.

20 MR. DONNELLY: And he wanted to talk to some other  
21 people. But on its face, he thought it was reasonable and  
22 something that he would likely sign, but he just wanted to  
23 consider it a little bit more --

24 THE COURT: All right. And then we have those who  
25 are in default. Right?

1 MR. DONNELLY: Yeah, just to finish the --

2 THE COURT: Oh, I'm sorry. Go ahead. I didn't  
3 mean to interrupt you.

4 MR. DONNELLY: -- story on those people, there's  
5 Mr. Korchevsky and his entity, NTS Capital. I've had  
6 positive conversations with his attorneys as well.

7 THE COURT: Okay.

8 MR. DONNELLY: They have the settlement documents.  
9 They're not signed yet. So I expect to have some more  
10 conversations with them. But they've been transmitted.

11 And then there's one entity that Mr. Momotok and  
12 Arkadiy Dubovoy are both managing members before, and that  
13 has proven a little tricky logistically in terms of who can  
14 sign and who should sign.

15 THE COURT: Right.

16 MR. DONNELLY: And so my proposed solution to both  
17 of them is that they both sign.

18 THE COURT: Yeah.

19 MR. DONNELLY: And I am working on that with both  
20 Mr. Momotok and counsel for Mr. Dubovoy and hope to achieve  
21 that.

22 THE COURT: Good. Good.

23 MR. DONNELLY: And then the remaining defendants  
24 are in default, as you know. Last time we were here,  
25 Memelland still had some time to find new counsel and appear.



1 THE COURT: Right.

2 MR. DONNELLY: They have not done so. I have not  
3 heard since we were last here anybody either purporting to  
4 represent them or from Memelland themselves. So in the last  
5 two months, I've had no communications from them. So at this  
6 point -- and we're happy to be guided by Your Honor as to the  
7 logistics of that. But I would envision a motion to strike  
8 the answer -- because when they were represented, they had  
9 answered -- strike the answer, enter default. And then if  
10 Your Honor wants, we can include a request for default  
11 judgment as part of the same papers, or we could do that  
12 subsequently as a separate filing.

13 THE COURT: You mean as part of the same papers as  
14 the substituted service?

15 MR. DONNELLY: No.

16 THE COURT: Oh, I'm sorry.

17 MR. DONNELLY: An independent motion. So I think  
18 we need to file a motion to strike --

19 THE COURT: You mean a motion to strike -- I think  
20 you would do that first --

21 MR. DONNELLY: -- Memelland's answer -- and for --  
22 and entry of default. We could do that together.

23 THE COURT: And then entry of default, and then  
24 separately a default judgment --

25 MR. DONNELLY: Okay.

1 THE COURT: -- because, obviously, they have to at  
2 least have an opportunity to oppose. And then you can't do  
3 default judgment until there's default.

4 MR. DONNELLY: Okay.

5 THE COURT: Yeah, you could do strike and enter  
6 default all together and then stagger that with default  
7 judgment.

8 MR. DONNELLY: Okay.

9 And then with respect to Nelia Dubova, we filed a  
10 notice of service. We will be filing in the coming days for  
11 entry of the clerk's default.

12 THE COURT: Right.

13 MR. DONNELLY: And then subsequently we will be  
14 filing --

15 THE COURT: Default judgment.

16 MR. DONNELLY: Yeah, default judgment.

17 And that leaves -- that's everybody, save one  
18 defendant we'll hedge, who we anticipate requesting when we  
19 go to the Commission with the settlements, requesting that  
20 the Commission authorize us to dismiss Global Hedge; it  
21 appears to have ceased to exist.

22 THE COURT: Okay. Okay.

23 Mr. Momotok, do you have anything that you want to  
24 say, sir?

25 MR. MOMOTOK: -- Mr. Donnelly, he told it

1 correctly, we discussed with -- the agreement to sign, but I  
2 do -- more time -- looks like -- not to sign, because --  
3 agreements are going to be approved, they are going to be  
4 deemed satisfied.

5 So basically, you know, because -- kind of tied to  
6 my -- to the criminal decision, and the criminal decision  
7 is -- so I think -- Your Honor -- but I need some more time  
8 to consult with my friend, because I don't have counsel.

9 THE COURT: I understand.

10 Is there anything that he said that you disagree  
11 with, Mr. Donnelly?

12 MR. DONNELLY: No, Your Honor. I think just --  
13 just for the Court's benefit, because that audio was maybe a  
14 little hard to understand --

15 THE COURT: He basically said that once he signs,  
16 as he understands, he's not going to have any additional  
17 exposure under the signed settlement agreement, because it's  
18 going to basically run coextensively with the criminal  
19 judgment. Right?

20 MR. DONNELLY: Right. So -- so what we explained  
21 to Mr. Momotok is -- and what the documents say is, yes,  
22 there will be a monetary judgment. The monetary judgment  
23 will be deemed satisfied by the entry of the criminal  
24 judgment; so he's not paying twice. He'll pay the criminal  
25 authorities what he owes them.

1 THE COURT: Right.

2 MR. DONNELLY: And we also, you know, made an  
3 important point routinely and repeatedly, as we must, that  
4 all we can do is negotiate. Even after he signs it, from our  
5 standpoint, it's subject to Commission approval.

6 THE COURT: Right.

7 MR. DONNELLY: Commission has to authorize it  
8 first. And then because of the way our consents and proposed  
9 order works, we submit it to the Court for the Court's  
10 consideration and for the Court's entry of the order. So  
11 there are additional steps, even after he signs it. And he's  
12 aware of those.

13 THE COURT: Right. Okay.

14 When do you folks think you're going to have the  
15 motion to strike and enter default as to -- which were the  
16 parties again? I'm sorry.

17 MR. DONNELLY: That one is for Memelland, who had  
18 previously appeared --

19 THE COURT: Right.

20 MR. DONNELLY: -- and had been represented by Sher  
21 Tremonte, but --

22 THE COURT: Right. I remember them at some of the  
23 earlier conferences.

24 MR. DONNELLY: They have withdrawn.

25 THE COURT: Yup.

1           You tell me in terms of -- deadline to file. If  
2 it's July, it's fine. I could tell you this. We're busy,  
3 and Judge Arleo is on a significant criminal trial right now.  
4 So --

5           MR. DONNELLY: Okay.

6           THE COURT: -- Her Honor has her hands full.

7           MR. DONNELLY: I appreciate that.

8           THE COURT: Yeah.

9           MR. DONNELLY: How about a little bit of  
10 staggering, so maybe July 20th -- I'm not sure --

11          THE COURT: I'll give you July 26th.

12          MR. DONNELLY: Thank you.

13          THE COURT: Great.

14          MR. DONNELLY: And if we can file them earlier, we  
15 will.

16          THE COURT: You -- certainly.

17          MR. DONNELLY: And then with respect to the  
18 proposed settlements, Your Honor, what I'd like to do --

19          THE COURT: Yeah.

20          MR. DONNELLY: -- and it takes a little while to go  
21 through the process. What I'd -- internally. What I'd like  
22 to do is get them signed and bundle them --

23          THE COURT: Okay.

24          MR. DONNELLY: -- and submit them to our client in  
25 one fell swoop. So that --

1 THE COURT: Yeah, that would help -- that will  
2 help; rather than a trickle.

3 MR. DONNELLY: Right.

4 THE COURT: In terms of getting in front of the  
5 Commission.

6 MR. DONNELLY: And so I'm thinking that might take  
7 until -- until the end of the summer on that.

8 But the faster I can get them signed --

9 THE COURT: So why don't we say, then, that by -- I  
10 mean, already have the renewed motion to -- for a substituted  
11 service; the motion to strike and enter default by the end  
12 of -- why don't we say by August 30th, you'll just give me a  
13 status report?

14 MR. DONNELLY: Yes, Your Honor.

15 THE COURT: Does that make sense?

16 MR. DONNELLY: Yes. Thank you.

17 THE COURT: Okay. Terrific.

18 Anything else?

19 MR. DONNELLY: Nothing from me, Your Honor.

20 THE COURT: No? All right.

21 Thank you.

22 Mr. Momotok? Do you have anything else, sir?

23 MR. MOMOTOK: No, thank you, sir.

24 THE COURT: All right. Thank you, Mr. Momotok.

25 We are adjourned.

1 (Conclusion of proceedings at 12:30 P.M.)  
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18 s/ *Sara L. Kern*

17th of June, 2019

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